

C & D Batteries Division, an Eltra Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 10-CA-17445

March 9, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on September 17, 1981, and an amended charge filed October 1, 1981, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, herein called the Union, and duly served upon C & D Batteries Division, an Eltra Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint on October 1, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 26, 1981, following a Board election in Case 10-RC-12351, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about September 10, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. The complaint also alleges that Respondent, since September 10, 1981, has unlawfully refused to supply the Union certain requested information for its use in collective bargaining: the names and addresses of employees as well as their wages, benefits, working hours, vacations, holidays, and job classifications. On October 19, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

¹ Official notice is taken of the record in the representation proceeding, Case 10-RC-12351, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the N.L.R.A., as amended.

On November 2, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. On November 9, 1981, Respondent filed an opposition to the General Counsel's motion. Subsequently, on November 12, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause, to which the Union filed a response.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, its response to the Notice To Show Cause, and its opposition to the Motion for Summary Judgment, Respondent attacks the validity of the Union's certification contending that the election in Case 10-RC-12351 was conducted in an inappropriate unit and that its objections to the conduct of the election were erroneously overruled.

Review of the record herein, as well as that in Case 10-RC-12351, reveals that on April 1, 1981, the Regional Director for Region 10 issued a Decision and Direction of Election in which he found the following unit appropriate for purposes of collective bargaining:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionists, office clerical employees, guards and supervisors as defined in the Act.

Thereafter, Respondent filed with the Board a timely request for review of the Decision and Direction of Election, alleging that the Regional Director erroneously included the quality control and oxide mill employees in the unit and erroneously excluded Eugene Ellis as a supervisor. On April 29,

1981, the Board denied Respondent's request for review. Thereafter, an election was held on May 1, 1981. The tally of ballots shows that 95 votes were cast for, and 89 votes were cast against, the Union. There were 2 challenged ballots.

On May 8, 1981, Respondent timely filed eight objections to conduct affecting the election, alleging acts of violence and sabotage, material misrepresentations, and threats of violence and bodily harm. On June 26, 1981, the Acting Regional Director for Region 10 issued a Supplemental Decision and Certification of Representative in which he overruled Respondent's objections. The Acting Regional Director found, *inter alia*, that the evidence of alleged misconduct could not be attributed to the Union, nor did it warrant setting aside the election.

Thereafter, Respondent filed a timely request for review of the Acting Regional Director's decision, alleging that its objections should not have been overruled, and, in the alternative, that a hearing on its objections should have been held. On August 26, 1981, the Board denied Respondent's request for review.

As reflected in its answer to the complaint, its response to the Notice To Show Cause, and its opposition to the Motion for Summary Judgment, Respondent's defenses to the alleged violations of Section 8(a)(5) and (1) are that the election was conducted in an inappropriate unit, its objections were erroneously overruled, and, alternatively, a hearing thereon was required. However, these matters were raised and fully considered during the underlying representation proceeding and were resolved adversely to Respondent.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In its answer to the complaint, Respondent admits that it refused both the Union's request to

bargain and for information. It is well settled that the duty to bargain in good faith includes the duty to supply a labor organization information which is relevant to its duties as a collective-bargaining representative. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New York corporation, with an office and place of business in Conyers, Georgia, is engaged in the manufacture of industrial batteries. During the past calendar year, a representative period, Respondent sold and shipped from its Conyers, Georgia, facility goods valued in excess of \$50,000 directly to customers outside the State of Georgia.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionists, office clerical employ-

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

ees, guards and supervisors as defined in the Act.

2. The certification

On May 1, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 10, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on June 26, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 1, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 10, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, as well as to provide the Union with information relevant to its duty as collective-bargaining representative.

Accordingly, we find that Respondent has, since September 10, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. We also find that Respondent's refusal to provide the requested information likewise violates Section 8(a)(5) and (1).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the

meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order it to furnish, at the Union's request, the requested information relevant to unit employees: the names and addresses of employees, their wages, benefits, working hours, vacations, holidays, and job classifications.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. C & D Batteries Division, an Eltra Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its Conyers, Georgia, facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionists, office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 26, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collec-

tive bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 10, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about September 10, 1981, and at all times thereafter, to supply the Union with requested information relevant to unit employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, C & D Batteries Division, an Eltra Company, Conyers, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionists, office clerical employ-

ees, guards and supervisors as defined in the Act.

(b) Refusing to furnish the Union with requested information relevant to unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the Union with the requested information relevant to unit employees.

(c) Post at its Conyers, Georgia, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive repre-

sentative of the employees in the bargaining unit described below.

WE WILL NOT refuse to furnish the Union with information relevant to employees in the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by the Employer at its Conyers, Georgia facility including casters, pasting

employees, brushers, assemblers, finishers, plate wrappers, chargers, shipping and receiving employees, maintenance employees, truckers, janitors, quality control employees, oxide mill employees, but excluding service technicians, the engineering lab technician, the material control clerk, material control expeditors, the payroll clerk, the plant engineer clerk, the registered nurse, the secretary to the plant manager, the traffic secretary, the personnel secretary/receptionists, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish the Union with information relevant to employees in the above-described unit.

C & D BATTERIES DIVISION, AN
ELTRA COMPANY